

UNITED STATES DISTRICT
COURT

for the

Western District of New York

DEBORAH LAUFER

)

Plaintiff

)

)

Civil Action No. 20-cv-6212

v.

)

PGA SEQUOIA LLC

)

JURY TRIAL: YES__ NO X

Defendant

)

THE DEFENDANT'S AMENDED ANSWER TO THE COMPLAINT

I. The Parties Filing This Answer to the Complaint

Provide the information below for each defendant filing this answer or other response to the allegations in the plaintiff's complaint. Attach additional pages if needed.

PGA SEQUOIA LLC
YANNICK BASABAKWINSHI
2359 ELLISON RD.
CORNING, NY 14830

II. The Answer and Defenses to the Complaint

A. Answering the Claims for Relief

- 1) Defendant lacks a sufficient basis to admit or deny Plaintiff's 1 as to her medical condition.
- 2) Defendant lacks a sufficient basis to admit or deny Plaintiff's 2 as to her status as a "tester" nor who might confirm such status.
- 3) Admit
- 4) Admit
- 5) Deny violations of law, Admit jurisdiction
- 6) Neither Admit nor deny- it is a statement of reference to above statements
- 7) Admit
- 8) Admit

9) Admit

10) Admit

11) a. Lacks sufficient basis to know what Plaintiff did that day.

b. Denies alleged shortcomings in widely used web platforms exist, or if they exist that they violate the law, and if they violate the law that such alleged violations are under Defendant's control.

c. Defendant did not design the web sites in question and neither owns nor operates them.

12) a. Lacks sufficient basis to admit or deny Plaintiff's "intentions" but it would seem an intention to travel to a pandemic hotspot, as New York was in April of 2020 may indicate such alleged intention was not genuine.

b. Such "intention" is speculative as are any alleged harms from this allegedly "intended" activity.

13) Deny. a. Plaintiff was not discriminated against.

b. Defendant made repeated offers to accommodate Plaintiff's disability in correspondence with her attorney in attached exhibits.

c. Plaintiff made no actual reservation, and has no basis to believe that she was or would have been discriminated against.

14) Deny a. Defendant denies that the Online reservation system is the defendant company's system, rather it is a public accommodation itself, and Defendant is one of many users of it.

b. Defendant denies Plaintiff was denied meaningful information as the web site stated that the facility has wheelchair accessible bathrooms, parking and path of travel, and invites a prospective guest to place further requests in a special message box, so what we have is fully described and we offer to go above and beyond.

c. Defendant lacks information sufficient to form a belief as to whether Plaintiff has the described emotional reaction to an accurate description on a website.

d. Deny it is difficult to make a reservation.

e. Deny that the information on the subject web sites are insufficient to make an informed choice.

15) Deny it is true and

a. Defendant lacks the ability to modify the Online reservation service website as Defendant, like Plaintiff is only a user of said site.

b. Further Plaintiff admits she has not tried to use the reservation system, so her damages are speculative, at best.

16) Deny. a. Deny non compliance by Defendant with ADA

b. deny Plaintiff has reasonable grounds for her alleged beliefs, and

c. Deny discrimination.

17) Deny

18) Deny

19) Deny

20) Deny

21) Deny and a. The Online Reservation Services mentioned are not made parties, so Plaintiff has omitted necessary parties.

b. She asks for relief which cannot be granted by asking or ordering Defendant to do anything as Defendant LLC has no control over booking.com, expedia.com, hotels.com, or orbitz.com.

c. Defendant is only a purchaser of said ORS services. Essentially this is a lawsuit where a customer is suing another customer.

- d. booking.com, expedia.com, hotels.com, or orbitz.com are providing Plaintiff and Defendant with different, complimentary services, but both are customers or potential customers of the named ORS'.
- e. Defendant is being provided with an introduction to potential clients, and Plaintiff is receiving awareness of available sleeping accommodations. Neither controls the fields of information that the web sites allow or provide.
- 22) Neither Admit nor deny- it is a statement of reference to above statements
- 23) Admit the law exists, deny violating it.
- 24) Admit such a law exists, denies violating it. Quite the contrary.
- 25) Admit
- 26) Deny
- 27) Deny
- 28) Deny. This is a frivolous nuisance lawsuit.

B. Defenses to the Claims for Relief

- II.A.1. The complaint fails to state a claim upon which relief can be granted because Defendant has no control over or ownership interest in the named ORS's but is merely a user of their service like Plaintiff. b. She asks for relief which cannot be granted by asking or ordering Defendant to do anything as Defendant LLC has no control over booking.com, expedia.com, hotels.com, or orbitz.com.
- II.A.2. Defendant is only a purchaser of said ORS services. Essentially this is a lawsuit where a customer is suing another customer. The proper defendants if there is any violation are the Online Reservation Service providers.
- II.A.3. booking.com, expedia.com, hotels.com, or orbitz.com are providing Plaintiff and Defendant with different, complimentary services, but both are customers or potential customers of the named ORS'.
- II.A.4. Expedia.com owns Orbitz and hotels.com. Expedia Group is an American online travel shopping company for consumer and small business travel. Its websites, which are primarily travel fare aggregators and travel metasearch engines, services which benefit Plaintiff and Defendant.
- II.A.5. Defendant is being provided with an introduction to potential clients, and Plaintiff is receiving awareness of available sleeping accommodations. Neither controls the fields of information that the web sites allow or provide.
- II.A.6. Other parties booking.com, expedia.com, hotels.com, or orbitz.com need to be joined (added) in the case. The reason is the alleged violations are on their websites which they own and control.

II.A.6.a.

If the basis for subject-matter jurisdiction is diversity of citizenship, state the effect of adding the other party: There would be jurisdiction all are US companies subject to the Federal Courts.

The other parties are located in the following States

1) Booking Holdings Inc. is an American company organized in Delaware and based in Norwalk, Connecticut, that owns and operates several travel fare aggregators and travel fare metasearch engines including namesake and flagship Booking.com, Priceline.com, Agoda.com, Kayak.com, Cheapflights, Rentalcars.com, Momondo, and OpenTable. It operates websites in 40 languages and 200 countries.

2)Expedia.com owns Orbitz and hotels.com. Expedia Group is an American online travel shopping company for consumer and small business travel. Its websites, which are primarily travel fare aggregators and travel metasearch engines, include CarRentals.com, Expedia.com, HomeAway, Hotels.com, Hotwire.com, Orbitz, Travelocity, trivago and Vrbo. Orbitz named separately by Plaintiff is located at:

Orbitz, Inc., 500 W Madison St Ste 1000
Chicago, IL 60661-2559
<http://www.hotelclub.com>
(312) 894-5000

B. Asserting Affirmative Defenses to the Claims for Relief

Identify an affirmative defense or avoidance that provides a basis for the defendant to avoid liability for one or more of the plaintiff's claims even if the basis for the claim is met. Any affirmative defense or avoidance must be identified in the answer. Include any of the following that apply, as well as any others that may apply.

The plaintiff's claim for financial damages and attorneys fees is based on speculative harm and Defendant is in compliance with the ADA

If the ORS' are non compliant Defendant is neither responsible for nor liable for the lilegedly missing content.

Defendants advertisements do comply with the ADA.

C. Asserting Claims Against the Plaintiff (Counterclaim) or Against Another Defendant (Cross-Claim)

For either a counterclaim against the plaintiff or a cross claim against another defendant, state briefly the facts showing why the defendant asserting the counterclaim or cross-claim is entitled to the damages or other relief sought. Do not make legal arguments. State how each opposing party was involved and what each did that caused the defendant harm or violated the defendant's rights, including the dates and places of that involvement or conduct. If more than one counterclaim or cross-claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

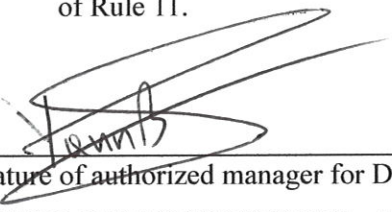
II.C.1. The defendant has the following claim against the plaintiff *attorneys fees for a frivolous lawsuit.*

- II.C.2. The defendant has the following claim against one or more of the other defendants, if the named missing defendants are not in compliance with the ADA, the they have caused said violation through their negligence and having enticed defendant to use their allegedly professional service, and received the benefit therefrom, and if a violation is found, ought to hold defendant harmless for such failings if any, and said ORS's should be fully liable for the damages, if any.
- II.C.3. I have spent \$1,000.00 thus far to hire a lawyer, and I ask for maximum punitive or exemplary damages claimed, the amounts to be determined, and the reasons I am entitled is that this is a frivolous lawsuit. Upon information and belief Plaintiff files many of these suits, and such behavior needs to be deterred. Rule 11 of the Federal Rules of Civil Procedure and similar state rules require that an attorney perform a due diligence investigation concerning the factual basis for any claim or defense. The advertisements were ADA compliant in that they stated what accommodations we had and we offered to do more. Due diligence would have revealed that the lawsuit has no basis in fact and that defendant is not the proper Plaintiff.
- II.C.4. Plaintiff has engaged in the wrongful use of civil proceedings against the defendant. Defendant requests that the court grant damages to recover the cost of defending the frivolous lawsuit with other damages including emotional distress, damage to reputation, and punitive damages.
- II.C.5. The Plaintiff has clearly filed this frivolous lawsuit: (a) without probable cause, and (b) primarily for the ulterior motive of collecting the relatively minor sum demanded to get rid of the nuisance. Such lawsuits harm the economy, clog the courts and bring damages to the reputation of the legal profession.
- II.C.6. This lawsuit is essentially an attempt at extortion. The Plaintiff demanded that Defendant actually pay off the amount demanded and because the amount is lower than the legal costs that Defendant would incur it makes financial sense to give in to such "legal blackmail". Plaintiff relies on this and the fact that some targeted businesses may pay off simply they do not want to deal with the legal hassle or the embarrassment.
- II.C.7. I ask that the Plaintiff post a bond of \$15,000.00 to cover Defendant's legal costs if this lawsuit is found to be frivolous.
- II.C.8. Petitioner is being a litigious party and this should lead to a dismissal of this frivolous lawsuit with attorneys fees and court costs awarded to the defendant.

III. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this answer: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the answer otherwise complies with the requirements of Rule 11.

Date of signing: July 26th, 2020


Signature of authorized manager for Defendant

YANNICK BASABAKWINSHI For PGA

Sequoia LLC


Susan BetzJitomir, Esq.

Attorney for Defendant
1 Liberty Street
Bath, New York 14810
Telephone: (607) 776-4200
Fax: (607) 776-4212

VERIFICATION

STATE OF NEW YORK

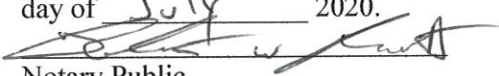
COUNTY OF STEUBEN

Authorized manager for Defendant YANNICK BASABAKWINSHI For PGA Sequoia LLC, being duly sworn, deposes and says that deponent is the Plaintiff in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, deponent believes it to be true.



Signature of authorized manager for Defendant
YANNICK BASABAKWINSHI For PGA Sequoia LLC


Sworn to before me this 16
day of July 2020.


Notary Public

Robert W. Kracht
Notary Public, State of New York
Reg. No. 01KR6348310
Qualified in Schuyler County
My Commission Expires September 26, 2020

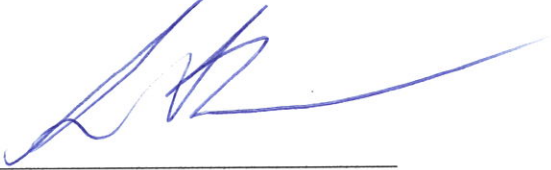
CLIENT CERTIFICATION

I, the undersigned, under the penalty of perjury hereby certify that: (a) I have carefully read and reviewed the annexed (document or affidavit, etc.) and all information contained in that document is true and accurate in all respects to the best of my knowledge and understanding; (b) neither my attorney, nor anyone acting on my attorney's behalf, was the source of any of the information contained therein; (c) I provided all of the information contained in the annexed document to my attorney; (d) I understand that my attorney, in executing the attorney certification required by 22 NYCRR § 202.16(e), is relying entirely upon the information provided by me and upon my certification that all such information is true and accurate; and (e) the annexed document includes all information which I provided to my attorney which is relevant to such document, and my attorney has not deleted, omitted or excluded any such information.


Dated: July 16th 2020
Signature of authorized manager for Defendant
YANNICK BASABAKWINSHI For PGA Sequoia LLC

ATTORNEY CERTIFICATION

I, Susan BetzJitomir, Esq., an attorney, hereby certify that to the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of the within papers or the contentions therein are not frivolous within the meaning Rule 11 and other of applicable Federal Statutes and rules and 22 NYCRR § 130.1.1(c).

A handwritten signature in blue ink, appearing to be 'SB', is written above a horizontal line.

Susan BetzJitomir, Esq.

Attorney for Defendant
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Bath, New York 14810
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Fax: (607) 776-4212